



May 4, 2016

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Hon. Mike Schmitz, Mayor  
City of Dothan  
P. O. Box 2128  
Dothan, Alabama 36302

**Re: Notice of Intent to File Suit under the Clean Water Act**

Dear Mayor Schmitz:

Pursuant to the Clean Water Act § 505, 33 U.S.C. § 1365, and 40 C.F.R. Part 135, Subpart A, you are hereby notified that after the expiration of 60 days following service of this notice, the Environmental Defense Alliance intends to file suit against the City of Dothan to require compliance with NPDES Permit Nos. AL0072737 and AL0022764 and Clean Water Act § 301(a), 33 U.S.C. § 1311(a).

**I. Violations**

**A. Failure to properly operate and maintain**

The City of Dothan was issued NPDES Permit No. AL0072737 for discharges of pollutants (treated sanitary sewage) from the Dothan New Cypress Wastewater Treatment Plant located at 2431 Helms Road, Dothan, Alabama, into Limestone Creek, a navigable water of the United States. The City of Dothan was also issued NPDES No. Permit AL0022764 for discharges of pollutants (treated sanitary sewage) from the Omussee Creek Wastewater Treatment Plant located at 457 Jerry Drive, Dothan, Alabama, into Omussee Creek, a navigable water of the United States. Part II. A. 1. of these permits includes the following condition:

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities only when necessary to achieve compliance with the conditions of the permit.

Hon. Mike Schmitz, Mayor  
May 4, 2016  
Page 2

The Environmental Defense Alliance alleges that the City of Dothan failed to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the City to achieve compliance with the conditions of NPDES Permit Nos. AL0072737 and AL0022764 on the dates indicated in the attached tables. These failures resulted in Sanitary Sewer Overflows of untreated sanitary sewage as described in the attached tables.

#### **B. Discharges without permit**

Clean Water Act § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into navigable waters of the United States without a National Pollutant Discharge Elimination System permit.

The Environmental Defense Alliance alleges that the City of Dothan experienced Sanitary Sewer Overflows that resulted in the discharge of untreated sanitary sewage from point sources into navigable waters of the United States without a National Pollutant Discharge Elimination System permit in violation of Clean Water Act § 301(a), 33 U.S.C. § 1311(a). These unlawful discharges are described in the attached tables.

#### **II. Previous enforcement actions**

On July 23, 2012, the U.S. Environmental Protection Agency issued Administrative Order on Consent No. CWA-04-2012-4780. The Order cited the City of Dothan for failure to properly operate and maintain the wastewater collection systems that transport wastewater to the Dothan New Cypress Wastewater Treatment Plant and Omussee Creek Wastewater Treatment Plant resulting in Sanitary Sewer Overflows in violation of Part II. A. 1. of NPDES Permit Nos. AL0072737 and AL0022764; and for discharges of Sanitary Sewer Overflows in navigable waters of the United States without a permit in violation of Clean Water Act § 301(a), 33 U.S.C. § 1311(a). The Order required the City of Dothan to implement capacity, management, operation, and maintenance programs with the goal of achieving compliance with the NPDES permits and the Clean Water Act. The Order, however, did not require compliance with Part II. A. 1. of NPDES Permit Nos. AL0072737 and AL0022764 or cessation of all unpermitted discharges of Sanitary Sewer Overflows into navigable waters of the United States.

On July 15, 2014, the United States of America, State of Alabama, and Alabama Department of Environmental Management filed suit against the City of Dothan. Case No. 1:14-cv-00680 (M.D. Ala. July 15, 2014). The complaint alleged that the City of Dothan discharged Sanitary Sewer Overflows without a permit in violation of Clean Water Act § 301(a), 33 U.S.C. § 1301(a); discharged pollutants in violation of the discharge limitations in NPDES

Hon. Mike Schmitz, Mayor  
May 4, 2016  
Page 3

Permit Nos. AL0072737 and AL0022764; failed to file noncompliance reports in violation of the conditions of NPDES Permit Nos. AL0072737 and AL0022764; and failed to properly operate and maintain its facilities and systems of treatment and control, and related appurtenances, which are installed or used by the City to achieve compliance with the conditions of NPDES Permit Nos. AL0072737 and AL0022764 in violation of the conditions of those permits.

On July 15, 2014, the United States of America, State of Alabama, Alabama Department of Environmental Management, and City of Dothan filed with the Court a Joint Stipulation of Settlement. The Settlement required that the City of Dothan pay a civil penalty. The Settlement, however, did not require compliance with Part II. A. 1. of NPDES Permit Nos. AL0072737 and AL0022764 or cessation of all unpermitted discharges of Sanitary Sewer Overflows into navigable waters of the United States. The Court approved the Joint Stipulation of Settlement on September 22, 2014.

### **III. Sanctions**

The Clean Water Act authorizes injunctive relief and civil penalties up to \$37,500 per day per violation. In addition, the Act authorizes the award of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines that such an award is appropriate. Suit may be avoided if these violations have ceased before the expiration 60 days following service of this notice. Please advise the undersigned of any measures which you may undertake which you contend have permanently abated these violations before suit is filed.

Sincerely,



David A. Ludder  
Attorney for  
Environmental Defense Alliance

cc: Hon. Gina McCarthy, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Hon. Mike Schmitz, Mayor  
May 4, 2016  
Page 4

Hon. Heather McTeer Toney  
U.S. Environmental Protection Agency-Region 4  
61 Forsyth Street SW  
Atlanta, GA 30303

Hon. Lance LeFleur, Director  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, AL 36130-1463

Environmental Defense Alliance  
1449 Ridge Road  
Birmingham, AL 35209  
Tel. (205) 249-4743

SANITARY SEWER OVERFLOWS FROM DOTHAN OMUSSEE CREEK WASTEWATER TREATMENT SYSTEM					
Estimated Start Date & Time	Estimated End Date & Time	Location	Receiving Water	Estimated Volume (Gallons)	
2/3/2016 3:45 PM	2/4/2016 10:30 AM	4146 Omussee Road	Omussee Creek	5,200	
9/29/2015 12:16 PM	9/29/2015 12:30 PM	1603 N. Range Street	Omussee Creek	140	
9/9/2015 3:12 PM	9/9/2015 6:00 PM	1118 E. Main Street	Omussee Creek	250	
7/25/2013 6:40 AM	7/25/2013 6:45 AM	456 Jerry Drive	Storm Drain	<25	
7/23/2013 7:38 PM	7/24/2013 7:30 PM	2250 Lake Street	Omussee Creek	1,920	
4/25/2013 8:20 AM	4/25/2013 8:40 AM	210 Crossing Lane	Golf Creek	600	
4/11/2013 9:00 PM	4/13/2013 4:30 PM	1795 Webb Road	Omussee Creek	2,500,000	
4/8/2013 11:00 AM	4/8/2013 12:00 PM	1000 Blk. Dellwood Ave.	Omussee Creek	1,100	
3/7/2013 11:00 AM	3/8/2013 3:30 PM	100 Blk. Plant Street	Omussee Creek	15,000	
2/26/2013 7:45 AM	2/26/2013 2:40 PM	1304 Continental	Omussee Creek	10,375	
2/26/2013 7:30 AM	2/26/2013 2:30 PM	816 Mobile Street	Omussee Creek	105,000	
2/23/2013 9:57 AM	2/23/2013 5:30 PM	305 E. Spring Ave.	Omussee Creek	8,325	
2/11/2013 10:30 AM	2/11/2013 4:10 PM	1305 Continental	Omussee Creek	121,900	
2/11/2013 10:30 AM	2/11/2013 12:55 PM	305 E. Spring Ave.	Omussee Creek	11,375	
2/11/2013 10:30 PM	2/12/2013 10:30 AM	702 East Spring	Omussee Creek	12,000	
2/11/2013 8:37 AM	2/11/2013 3:55 PM	Inter. Graduate St. and Carl St.	Omussee Creek	15,330	
2/11/2013 10:07 AM	2/11/2013 12:45 PM	531 Headland Ave.	Omussee Creek	790	
2/11/2013 9:57 AM	2/11/2013 4:00 PM	668 Ross Clark Circle	Omussee Creek	12,705	
1/27/2013 11:15 AM	1/27/2013 12:15 PM	200 Blk. Gialton Street	Omussee Creek	250	
12/17/2012 3:30 PM	12/17/2012 4:30 PM	217 East Spring Street	Omussee Creek	50	
5/18/2012 8:03 PM	5/18/2012 10:00 PM	2209 Berryhill Drive	Golf Creek	800	
3/20/2012 12:17 PM	3/20/2012 1:17 PM	210 Crossing Lane	Omussee Creek	250	
10/13/2011 8:30 AM	10/13/2011 9:00 AM	300 Blk. Of Sixth Avenue	Omussee Creek	200	
4/28/2011 7:00 AM	4/28/2011 7:10 AM	457 Jerry Drive	Storm Drain	3,500	

SANITARY SEWER OVERFLOWS FROM DOTHAN NEW CYPRESS WASTEWATER TREATMENT SYSTEM		
Estimated Start Date & Time	Estimated End Date & Time	Location
		Receiving Water
		Estimated Volume (Gallons)
4/1/2016 3:30 PM	4/2/2016 6:50 AM	100 Pinecrest Drive
4/1/2016 3:00 PM	4/2/2016 6:50 AM	303 E. Carroll Street
4/1/2016 6:30 AM	4/5/2016 3:00 PM	Cypress Creek
4/1/2016 6:30 AM	4/4/2016 2:45 PM	Cypress Creek
3/31/2016 5:25 PM	4/3/2016 9:04 AM	322 Kornegay
2/3/2016 3:25 PM	2/4/2016 10:13 AM	576 Inez Road
2/3/2016 3:26 PM	2/4/2016 10:11 AM	318 Kornegay
2/3/2016 2:48 PM	2/5/2016 8:00 AM	303 E. Carroll Street
12/30/2015 3:00 PM	1/2/2016 8:20 AM	100 Pinecrest Drive
12/30/2015 2:00 PM	1/1/2016 7:30 AM	Cypress Creek
12/29/2015 10:00 AM	1/3/2016 7:00 AM	Cypress Creek
12/23/2015 2:45 PM	12/26/2015 6:15 AM	Cypress Creek
11/8/2015 5:00 PM	11/12/2015 6:00 AM	Cypress Creek
9/23/2015 9:23 AM	9/23/2015 11:24 AM	404 Greenbriar
2/25/2015 12:15 PM	2/26/2015 8:00 AM	576 W. Inez Road
12/24/2014 7:00 AM	12/24/2014 9:00 PM	202 Carla Lynn
9/5/2014 8:45 AM	9/5/2014 9:15 AM	RR Track Easement RCC Saunders Rd.
4/30/2014 3:30 PM	5/2/2014 6:40 AM	576 Inez Road
4/30/2014 10:23 AM	4/30/2015 9:45 PM	100 Pinecrest Drive
4/18/2014 4:52 PM	4/18/2014 8:10 PM	100 Pinecrest Drive
1/30/2014 9:15 AM	1/30/2014 9:15 AM	114 Berry Patch Lane
1/29/2014 3:30 PM	1/30/2014 3:50 PM	114 Berry Patch Lane
1/10/2014 6:30 AM	1/10/2014 7:10 AM	114 Berry Patch Lane
8/23/2013 7:30 AM	8/25/2013 12:30 PM	114 Berry Patch Lane
2/27/2013 2:00 PM	2/28/2013 10:45 AM	114 Berry Patch Lane
2/27/2013 12:00 PM	3/4/2013 12:00 AM	212 W. Saunders Rd. Lot 203
2/26/2013 1:51 PM	2/27/2013 4:05 AM	576 Inez Road
2/11/2013 8:02 AM	2/11/2013 1:50 PM	204 Reid Drive
2/11/2013 9:00 AM	2/11/2013 9:00 PM	404 Greenbriar Drive
2/11/2013 7:56 AM	2/11/2013 8:30 PM	117 Massee Drive
4/14/2012 9:30 AM	4/14/2012 9:45 AM	202 Carla Lynn Court
1/15/2012 9:11 AM	1/15/2012 10:00 PM	2359 Cottonwood Highway
11/4/2011 8:30 AM	11/4/2011 9:00 AM	301 Connely Street
6/5/2011 2:16 PM	6/5/2011 2:45 PM	1006 S. Oates
5/10/2011 7:50 AM	5/10/2011 8:15 AM	1103 Clearmont Drive